THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

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WRIT APPEAL No. 164 OF 2000

JUDGMENT : (Per Hon'ble Sri Justice R.Subhash Reddy)

The State of Andhra Pradesh, represented by its Principal Secretary, Revenue Department and other respondents in writ petition No.14821 of 1999 have filed this writ appeal, aggrieved by the orders of the learned Single Judge, dated 13th December, 1999.

Few necessary facts in brief, are as follows:

One Smt.N.Paul and others were holding land in survey No.122 of Shaikpet village, to an extent of Ac.2-15 guntas, equivalent to 9609 square metres within the urban aqqlomeration of Hyderabad. On advent of the provisions under the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'), the said owners filed declarations, declaring their land before the Special Officer and competent authority, Urban Land Ceiling, Hyderabad. Declarations were processed as contemplated under Section 8 of the Act and ultimately, final orders were passed under Section 8 (4) of the Act, holding that the declarants were holding a total extent of 9609 square metres of urban vacant land and 8609 square metres of excess vacant land, after retainable extent of 1000 square metres.

The 1st respondent-writ petitioner is a Housing Co-operative Society, registered under A.P.Co-operative Societies Act, 1964. The State Government, earlier, issued orders in G.O.Ms.No.136, dated 28-01-1981, in which, guidelines were issued for processing the applications for grant of exemption, as provided

under Section 20(1)(a) of the Act. The said guidelines were issued with a vowed objective, to curb the speculative transactions and to make available residential plots easily, to the needy persons by granting exemption to the owners of the land, so as to transfer the same in favour of the registered cooperative housing societies. Pursuant to the guidelines issued by the Government in G.O.Ms.No. 136, dated 28-01-1981, the owners of the above said land, and, 1st respondent-Co-operative Housing Society, jointly made an application before the Government, seeking exemption from Chapter-III of the Act. But, during the pendency of the said application, the Government had issued revised guidelines in G.O.Ms.No. 964, dated 27-06-1983, and, based on the such revised guidelines, the application filed by the first respondent-Cooperative Housing Society was, earlier, rejected by the Government vide Memo No.2118/UC.II/81-5 and 6, dated 25-07-1984, for grant of exemption. The said rejection orders were, earlier, challenged by the first respondent-Cooperative Housing Society, before this Court in Writ Petition No. 14731 of 1984, which was allowed by this Court, by order dated 18-01-1988. Even thereafter, when there was again rejection, Writ Petition in W.P.No. 18796 of 1997 was filed. Even the said Writ Petition was disposed of by this Court, with a direction to reconsider the matter afresh. Even thereafter, without reference to the said order, orders were passed, rejecting the request for grant of exemption. The first respondent-Cooperative Housing Society pleading that said consideration was in violation of the directions issued by this Court, earlier, filed Contempt Case No. 1682 of 1997, and, the same was disposed of by setting aside the rejection orders, on the ground that the orders were passed without reference to the orders passed by this Court. In pursuance of the orders passed in Contempt Case No. 1682 of 1997, dated 4-2-1998, the matter was reconsidered by the Government, and, finally rejected the request for grant of exemption by the impugned order in the Writ Petition, dated 01-05-1999, passed in Memo No.56887/UC.II(1)/97-11.

Aggrieved by the said order, the first respondent-Cooperative Housing Society had filed the present writ petition No.14821 of 1999. The said Writ Petition was filed, mainly on the ground that rejection was without recording valid reasons, and, also on the ground, that in view of very repeal of the provisions of the Act, by the Union of India, by repealing Act, it was incumbent upon the Government to issue necessary orders, granting exemption. It was also the case of the Writ Petitioner-

Society, that the application for grant of exemption was not considered with reference to the considerations as required under Section 20 (1)(a) of the Act, and, the guidelines issued by the Government in G.O.Ms.No. 136, dated 28-01-1981.

The relief sought in the Writ Petition was resisted by filing Counter affidavit, stating that the Government had considered the request for grant of exemption, but, however, declined to grant the same, as the said land is required for other government purposes. Further, it was the case of the respondents, that though the Urban Land (Ceiling and Regulation) Act, 1976, was repealed by the Parliament by repealing Act, but, however, it was their case, repeal of the Act has no application to the State of Andhra Pradesh, as it had not adopted the same by passing resolution as required under Clause (2) of Article 252 of the Constitution of India. Further, pleading that the grant of exemption is not a matter of right to any applicant, it sought for dismissal of the Writ Petition.

While considering the respective contentions in detail, after scrutinizing the relevant files relating to issuance of the impugned memo in the Writ petition, the learned Single Judge rejected the contention of the writ petitioner-society, that the repealing Act is applicable to the State of Andhra Pradesh. Mainly the said contention was rejected on the ground that the repealing Act was not adopted by the State of Andhra Pradesh by passing resolution, as required under Clause (2) of Article 252 of the Constitution of India. So far as this aspect is concerned, we are in agreement with the view of the learned Single Judge, and, the learned Single Judge had rightly rejected the contention of the Writ Petitioner. But, however, the learned Single Judge, while recording the finding that request for grant of exemption was not considered with reference to the relevant considerations as required under Section 20(1)(a) of the Act, and also, guidelines issued in G.O.ms.No. 136, dated 28-1-1981, allowed the Writ Petition, directing the appellant-Government herein to issue appropriate orders granting exemption under Section 20 of the Act. Aggrieved by such direction of the learned Single Judge, for grant of exemption in favour of the first respondent-Cooperative Housing Society, the present Writ Appeal is filed.

It is contended on behalf of the learned Advocate General, that pursuant to

processing of declaration, and, passing of final order under Section 8(4) of the Act, consequential notification was also issued under Section 10 of the Act and by virtue of the same, the land vested with the State Government; in that view of the matter, no exemption can be granted to the first respondent-Cooperative Housing Society now. It is submitted, that grant of exemption is a matter of discretionary power of the Government, to consider the same, and, the first respondent-Cooperative Housing Society cannot seek exemption as a matter of right. Further, it is submitted, that in any event, the learned Single Judge ought not to have issued directions for grant of exemption, as it is a matter, which is required to be considered by the competent authority as contemplated under Section 20(1)(a) of the Act, read with guidelines issued in this regard. Further, it is submitted, that the land is required for other public purposes; in that view of the matter, the Government had already considered the request of the writ petitioner, and, rejected the same. It is stated, in an order rejecting grant of exemption, no detailed reasons need be given, and, in any event, even if it is held that the application is not considered with reference to relevant considerations as required under Section 20(1)(a) of the Act and guidelines framed thereunder, it is a matter for the Government, to reconsider the same, but, however, no positive direction can be given to grant exemption as such.

On the other hand, it is submitted by Sri C.Hanumantha Rao, the learned Counsel appearing for the first respondent-Cooperative Housing Society, that in this case, housing society was registered in the year 1981, with a view to allot house sites to the needy persons, by purchasing the land from the declarants by entering into agreement, as early as in the year 1981,but, however, the Government had not considered the application with due regard to relevant provisions, and, repeatedly rejected the same without assigning valid reasons. It is submitted, when the revised guidelines were issued in G.O.Ms.No. 964, dated 27th June, 1983, while rejecting the request for grant of exemption, the Government itself directed the Urban Development authority, to consider for allotment of excess land to the members of the very petitioner-Society. As such, it is not open for the Government to reject the request for grant of exemption, either on the ground, that the society is not a genuine one, or, the excess land is required for other public purposes. It is submitted, that as much as exemption application was filed in the year 1981, and, for all these years, the same was pending consideration before them; in that view of the matter, it is not

open for the Government now to reject the request on the ground that subsequently some others have applied for allotment of very same excess land. With reference to the plea of the appellants that the land vested with the Government, the learned Counsel has placed reliance on the judgment of the Supreme Court in the case of *Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad & Another V. P.S.Rao*, in support of his argument that the application for grant of exemption can be considered, even after the excess land is determined and vests with the State, under Section 10 of the Act.

With reference to the above submissions, it is apt to note that Section 20(1)(a) of the Act, empowers the State to grant exemption to any person from Chapter-III of the Act, having due regard to location of such land, the purpose for which such land is being, or, is proposed to be used, and, such other relevant factors, as the circumstances of the case may require. Further, for processing the applications for grant of exemption, Government itself issued instructions/guidelines in the shape of G.O.Ms.No.136, dated 28th January, 1981. In the very guidelines, it is indicated that the benefit of exemption is, to curb the speculative transactions and to easily make available residential plots to the members of the Co-operative Housing Societies. Though the power of exemption of the Government is discretionary and administrative, it is fairly well settled that even to decide such applications, they have to be backed by valid reasons. The power of exemption is not only a right conferred on the State Government, but also, such power is coupled with duty to exercise such power in reasonable and fair manner. Though no detailed reasons need be communicated to the applicants, but, the Governmental authorities have to consider the applications for exemption, keeping in mind the objective behind such provisions for grant of exemption, and, the guidelines issued in this regard. But, in the instant case, though it is repeatedly rejected, but, it is rejected only on the ground that the surplus land is required for other purposes, by merely stating that there are no merits in the request. The learned Single Judge, while perusing the records relating to passing of the impugned memo, has clearly recorded the finding, that no valid reasons had been recorded even in the note file relating to passing of the impugned order. Though an attempt is made to plead that it is not a genuine society, but, however, it is to be noted, that while rejecting the application for grant of

exemption, pursuant to the revised guidelines in G.O.Ms.No. 964, dated 27-6-1983, the very Government has directed the Urban Development Authorities to consider for grant of allotment of plots in favour of the needy members of the very society. As, mainly the impugned memo in the Writ Petition was issued rejecting the request for grant of exemption on the ground that there are no merits in the request, and, also on the ground that the excess land is required for other public purposes, we are in agreement with the view of the learned Single Judge, that the request for grant of exemption was not considered with reference to the due requirements as contemplated under Section 20 (1)(a) of the Act, read with guidelines issued in G.O.Ms.No. 136, dated 28-1-1981. But, however, it is to be noted, even if the request for grant of exemption is rejected without any valid reasons, it is for the Government to reconsider the same, but the same is no ground to issue positive directions for grant of exemption. Even with regard to the argument of the learned Advocate General, that the land vested with State Government, is also no ground to reject the application. The judgment of the Apex Court in the case of *Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad & Another V. P.S.Rao* (1st supra), cited by the learned Counsel for the writ petitioner-Housing Society, supports his case. In the above said judgment, it is clearly held that even after vesting of the land with the State, under Section 10 of the Act, application for grant of exemption can be considered under Section 20(1)(a) and (b) of the Act. In that view of the matter, the submission of the learned Advocate-General cannot be accepted in this regard.

For the foregoing reasons, we dispose of the Writ Appeal, setting aside the order of the learned Single Judge, to the extent of issuing directions for grant of exemption. But, however, we direct the Government to consider the application filed by the first respondent-Society, for grant of exemption, afresh, in accordance with the provision under Section 20(1)(a) of the Act, by keeping in mind the applicable guidelines issued in this regard, including G.O. Ms.No.136, dated 28th January, 1981.

Writ appeal is partly allowed to the extent indicated above. No order as to costs.

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(BILAL NAZKI, ACJ)

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(R.SUBHASH REDDY, J)

07th October, 2005

Ajr/Msnr.